1952.

File No. O/cotton cloth Dealers/52
No. G 45/52
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Subject:—

opinion on the Bombay

cotton cloth Dealers

Licensing order.

File No. O. cotton cloth Dealers/52

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C O N T E N T S.

Legal Department File No. O. Cotton Cloth Dealers/1952

Sr.No.	F.I./4.7.	Subject	Pages.
		Opinions on the Bombay Cotton Cloth Dealers Licensing Order	
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2.	G-139 / 26-3-52	Questions (1) Whether the Agarva Mills should be prosecuted under the Order, for selling cloth in retail without a license from the time management was taken over by that Mill. (2) Whether the Agarva Mills or the Shrinagar Mills or the Officers and staff concerned should be prosecuted under clause 17 of the said Order for issuing cash memos which did not contain the license number of shop, addresses of the customers and other particulars as required under that clause. (3) Whether the said persons can be held liable for selling quantities of cloth in excess of the quantity permitted to be sold under the Provincial Textile Controller's Circular dated the 30th June 1950, and (4) Whether the Directors and office bearers of the Shrinagar Mills and of the Agarva Mills should be held vicariously liable for the aforesaid offences under section 9 of the Essential Supplies (Temporary Powers) Act.	3-8
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The question for consideration is whether it would be possible to introduce a clause in the Bombay Cotton Cloth Dealers Licensing Order, 1951 to the effect that the licence issued thereunder would be liable to be cancelled for breach by the licensee of the other orders issued by the State Government or Central Government relating to Cotton Textiles.

This question was considered in R.L.A's opinion No.G-565, dated the 14th November 1951, and it was held that as under the rules of natural justice it was not permissible to cancel a licence granted under one order for contravention of the provision of any other order, it would not be possible to amend the Licensing Order to provide for this. The proposal now made by the Civil Supplies Department being the same, the aforesaid opinion would apply.

Id/- P.H.L. 31/3

Remembrancer of Legal Affairs.

U.R. to S.T.C. No.G-1140, dated 31-3-1952

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The following questions arise for consideration:-

(1) Whether the Asarva Mills should be prosecuted under the Bombay Cotton Cloths Dealers Licensing Order, 1949, for selling cloth in retail without a licence from the time management was taken over by that Mill.

(2) Whether the Asarva Mills or the Shrinagar Mills or the Officers and staff concerned should be prosecuted under clause 17 of the said Order for issuing cash memos which did not contain the licence number of shop, addresses of the customers and other particulars as required under that clause.

(3) Whether the said persons can be held liable for selling quantities of cloth in excess of the quantity permitted to be sold under the Provincial Textile Controller's Circular dated the 30th June 1950, and

(4) Whether the Directors and office bearers of the Shrinagar Mills and of the Asarva Mills should be held vicariously liable for the aforesaid offences under section 9 of the Essential Supplies (Temporary Powers) Act.

Question No. 1.- Shrinagar Mills Limited, Ahmedabad was sold to Shri Chhotabhai S. Patel of Bombay on the 4th January 1951. It is now named as Asarva Mills No.2. Although the sale was to be completed within ~~it~~ one month from the 4th January 1951 under condition 6 of the agreement to sell such completion was to take effect from the 4th January 1951. Under condition 12 the vendor company was to run and work the Mill on behalf of the purchaser from the 4th January 1951 till the completion of the sale. It is not clear from the papers as to when the sale was completed and on what date the Asarva Mills took charge of the management. The evidence of sales now on record, namely,

cash memos, cases upto 6.2.1951 only. On the assumption that the sale was completed and the Asarva Mills took over management earlier than that date or on the further assumption that between that date and the 17th February 1951 there were further sale transactions after the Asarva Mills took over management, a prosecution would lie against Asarva Mills for running its retail shop without a license. If the sale was not completed earlier than the 6th February 1951 or the 17th February 1951, as the case may be, and the Asarva Mills obtained the license on the 17th February 1951, no prosecution whether of Asarva Mills or of Shrinagar Mills would be possible for breach of clause 4 of the Bombay Cotton Cloth Dealers Licensing Order, 1949, as the Shrinagar Mills had the license to run the shop. It may be observed that even if it be established that the Asarva Mills ran the retail shop after taking over management on completion of the sale but before actually obtaining the licence, inasmuch as they are the successors-in-interest and did apply for a license, a court is likely to treat the offence as merely technical.

Question No.2.- All the cash memos in the case papers are issued in the name of the Shrinagar Mills. As that Mill had the necessary licence till the sale was completed and management passed on to the purchaser Mills, the vendor Mill is liable for prosecution for breach of clause 17 of the Bombay Cotton Cloth Dealers Licensing Order, 1949 for issuing cash-memos which did not contain all the particulars as required by that clause. The Asarva Mills would not be liable for breach under this clause as it obtained the license on the 17th Feruary 1951 and the transactions are of a date prior to that

date when Asarva Mills was not a licensee.

Question No. 3.- The Asarva Mills cannot also be prosecuted for breach of clause 6(7) of the Bombay Cotton Cloth Dealers Licensing Order, 1949, as a retail distributor under the order means a person possessing a valid licence under the provisions of the order. As regards Shrinagar Mills also no prosecution is feasible as the directions are not issued either by the State Government or the Licensing authority as the Licensing authority for Ahmedabad is the District Magistrate, Ahmedabad and not the Provincial Textile Controller, Bombay, who has issued the directions in this case.

Prosecution for breach of clause 30 of the Cotton Textile (Control) Order, 1948, read with the Textile Commissioner's notification, No. 3014-Tex 1/48, dated the 30th July 1948, would also not lie as the Textile Commissioner issued special permission to the Shrinagar Mills to deliver bales Nos. 545 and 262 to their retail shops for sale to 'bona fie' consumers. The words 'subject to the restrictions as the Provincial Textile Controller, Bombay, may impose' which occur in another permission at p.69 are absent from this relevant permission at p. 71 and no offence can therefore be made out for selling cloth in excess of quantitative restrictions imposed by the Provincial Textile Controller unless there is sale of some cloth from the Textile Commissioner's permission at p. 69. Besides the only evidence that is available to show that the names on the cash memo are bogus is that of the two clerks. Only on one memorandum in pencil the name of Karsondas is shown. In the absence of independent evidence to prove that these names are bogus and that 80 yards of cloth were sold to Shri Karsondas it is not possible to establish that the Retail

Shop of the Mills sold the cloth in contravention of the Provincial Textile Controller's directions.

Question No. 4.- As regards this question, the Directors concerned with the day to day administration and the manager and other officers under whose direction the cloth was sold will be liable to prosecution, provided it is proposed to launch a prosecution against the Mill concerned.

Sd/- P.M.L. 25/3

Remembrancer of Legal Affairs.

H. M. (C.S. & L.)

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